

**ASSEMBLY BILL**

**No. 994**

**Introduced by Assembly Member Cox**

February 20, 2003

---

---

An act to amend Sections 65583, 65583.1, 65588, and 65589.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 994, as introduced, Cox. Housing: prison beds.

(1) The Planning and Zoning Law prescribes the provisions to be included in the housing element of a city or county general plan. The housing element is required to identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and to make adequate provision for the existing and projected needs of all economic segments of the community. Existing law, for those purposes, allows a city or county to substitute prescribed affordable housing for a specified percent of the obligation to identify adequate sites for any income category. Existing law also prohibits a local agency from disapproving or imposing specified conditions on an affordable housing development unless it makes specified written findings.

This bill would require the housing element to include an analysis of existing prison beds within the jurisdiction with the intention of meeting its very low, low-, and moderate-income housing requirement. The bill would provide that the prison beds in the jurisdiction count toward the requirement to identify adequate sites, and would include prison beds within the definition of affordable housing that subjects a local agency to the requirement to make those written findings. The bill would create a state-mandated local program by imposing new duties on local agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65583 of the Government Code is  
2 amended to read:

3 65583. The housing element shall consist of an identification  
4 and analysis of existing and projected housing needs and a  
5 statement of goals, policies, quantified objectives, financial  
6 resources, and scheduled programs for the preservation,  
7 improvement, and development of housing. The housing element  
8 shall identify adequate sites for housing, including rental housing,  
9 factory-built housing, and mobilehomes, and shall make adequate  
10 provision for the existing and projected needs of all economic  
11 segments of the community. The element shall contain all of the  
12 following:

13 (a) An assessment of housing needs and an inventory of  
14 resources and constraints relevant to the meeting of these needs.  
15 The assessment and inventory shall include all of the following:

16 (1) An analysis of population and employment trends and  
17 documentation of projections and a quantification of the locality's  
18 existing and projected housing needs for all income levels. These  
19 existing and projected needs shall include the locality's share of the  
20 regional housing need in accordance with Section 65584.

21 (2) An analysis and documentation of household  
22 characteristics, including level of payment compared to ability to  
23 pay, housing characteristics, including overcrowding, and housing  
24 stock condition.



1 (3) An inventory of land suitable for residential development,  
2 including vacant sites and sites having potential for  
3 redevelopment, and an analysis of the relationship of zoning and  
4 public facilities and services to these sites.

5 (4) An analysis of potential and actual governmental  
6 constraints upon the maintenance, improvement, or development  
7 of housing for all income levels and for persons with disabilities  
8 as identified in the analysis pursuant to paragraph (6), including  
9 land use controls, building codes and their enforcement, site  
10 improvements, fees and other exactions required of developers,  
11 and local processing and permit procedures. The analysis shall also  
12 demonstrate local efforts to remove governmental constraints that  
13 hinder the locality from meeting its share of the regional housing  
14 need in accordance with Section 65584 and from meeting the need  
15 for housing for persons with disabilities identified pursuant to  
16 paragraph (6).

17 (5) An analysis of potential and actual nongovernmental  
18 constraints upon the maintenance, improvement, or development  
19 of housing for all income levels, including the availability of  
20 financing, the price of land, and the cost of construction.

21 (6) An analysis of any special housing needs, such as those of  
22 the elderly, persons with disabilities, large families, farmworkers,  
23 families with female heads of households, and families and  
24 persons in need of emergency shelter.

25 (7) An analysis of opportunities for energy conservation with  
26 respect to residential development.

27 (8) *An analysis of existing prison beds within a city, county, or*  
28 *city and county's jurisdiction with the intention of meeting its very*  
29 *low, low-, and moderate-income housing requirement.*

30 (9) An analysis of existing assisted housing developments that  
31 are eligible to change from low-income housing uses during the  
32 next 10 years due to termination of subsidy contracts, mortgage  
33 prepayment, or expiration of restrictions on use. "Assisted  
34 housing developments," for the purpose of this section, shall mean  
35 multifamily rental housing that receives governmental assistance  
36 under federal programs listed in subdivision (a) of Section  
37 65863.10, state and local multifamily revenue bond programs,  
38 local redevelopment programs, the federal Community  
39 Development Block Grant Program, or local in-lieu fees.  
40 "Assisted housing developments" shall also include multifamily

1 rental units that were developed pursuant to a local inclusionary  
2 housing program or used to qualify for a density bonus pursuant  
3 to Section 65916.

4 (A) The analysis shall include a listing of each development by  
5 project name and address, the type of governmental assistance  
6 received, the earliest possible date of change from low-income use  
7 and the total number of elderly and nonelderly units that could be  
8 lost from the locality's low-income housing stock in each year  
9 during the 10-year period. For purposes of state and federally  
10 funded projects, the analysis required by this subparagraph need  
11 only contain information available on a statewide basis.

12 (B) The analysis shall estimate the total cost of producing new  
13 rental housing that is comparable in size and rent levels, to replace  
14 the units that could change from low-income use, and an estimated  
15 cost of preserving the assisted housing developments. This cost  
16 analysis for replacement housing may be done aggregately for  
17 each five-year period and does not have to contain a  
18 project-by-project cost estimate.

19 (C) The analysis shall identify public and private nonprofit  
20 corporations known to the local government which have legal and  
21 managerial capacity to acquire and manage these housing  
22 developments.

23 (D) The analysis shall identify and consider the use of all  
24 federal, state, and local financing and subsidy programs which can  
25 be used to preserve, for lower income households, the assisted  
26 housing developments, identified in this paragraph, including, but  
27 not limited to, federal Community Development Block Grant  
28 Program funds, tax increment funds received by a redevelopment  
29 agency of the community, and administrative fees received by a  
30 housing authority operating within the community. In considering  
31 the use of these financing and subsidy programs, the analysis shall  
32 identify the amounts of funds under each available program which  
33 have not been legally obligated for other purposes and which could  
34 be available for use in preserving assisted housing developments.

35 (b) (1) A statement of the community's goals, quantified  
36 objectives, and policies relative to the maintenance, preservation,  
37 improvement, and development of housing.

38 (2) It is recognized that the total housing needs identified  
39 pursuant to subdivision (a) may exceed available resources and the  
40 community's ability to satisfy this need within the content of the

1 general plan requirements outlined in Article 5 (commencing with  
2 Section 65300). Under these circumstances, the quantified  
3 objectives need not be identical to the total housing needs. The  
4 quantified objectives shall establish the maximum number of  
5 housing units by income category that can be constructed,  
6 rehabilitated, and conserved over a five-year time period.

7 (c) A program ~~which~~ *that* sets forth a five-year schedule of  
8 actions the local government is undertaking or intends to  
9 undertake to implement the policies and achieve the goals and  
10 objectives of the housing element through the administration of  
11 land use and development controls, provision of regulatory  
12 concessions and incentives, and the utilization of appropriate  
13 federal and state financing and subsidy programs when available  
14 and the utilization of moneys in a low- and moderate-income  
15 housing fund of an agency if the locality has established a  
16 redevelopment project area pursuant to the Community  
17 Redevelopment Law (Division 24 (commencing with Section  
18 33000) of the Health and Safety Code). In order to make adequate  
19 provision for the housing needs of all economic segments of the  
20 community, the program shall do all of the following:

21 (1) (A) Identify adequate sites ~~which~~ *that* will be made  
22 available through appropriate zoning and development standards  
23 and with services and facilities, including sewage collection and  
24 treatment, domestic water supply, and septic tanks and wells,  
25 needed to facilitate and encourage the development of a variety of  
26 types of housing for all income levels, including multifamily  
27 rental housing, factory-built housing, mobilehomes, housing for  
28 agricultural employees, emergency shelters, ~~and~~ transitional  
29 housing, *and prison beds* in order to meet the community's  
30 housing goals as identified in subdivision (b).

31 (i) Where the inventory of sites, pursuant to paragraph (3) of  
32 subdivision (a), does not identify adequate sites to accommodate  
33 the need for groups of all household income levels pursuant to  
34 Section 65584, the program shall provide for sufficient sites with  
35 zoning that permits owner-occupied and rental multifamily  
36 residential use by right, including density and development  
37 standards that could accommodate and facilitate the feasibility of  
38 housing for very low and low-income households.

39 (ii) Where the inventory of sites pursuant to paragraph (3) of  
40 subdivision (a) does not identify adequate sites to accommodate

1 the need for farmworker housing, the program shall provide for  
2 sufficient sites to meet the need with zoning that permits  
3 farmworker housing use by right, including density and  
4 development standards that could accommodate and facilitate the  
5 feasibility of the development of farmworker housing for low- and  
6 very low income households.

7 (B) For purposes of this paragraph, the phrase “use by right”  
8 shall mean the use does not require a conditional use permit, except  
9 when the proposed project is a mixed-use project involving both  
10 commercial or industrial uses and residential uses. Use by right for  
11 all rental multifamily residential housing shall be provided in  
12 accordance with subdivision (f) of Section 65589.5.

13 (C) The requirements of this subdivision regarding  
14 identification of sites for farmworker housing shall apply  
15 commencing with the next revision of housing elements required  
16 by Section 65588 following the enactment of this subparagraph.

17 (2) Assist in the development of adequate housing to meet the  
18 needs of low- and moderate-income households.

19 (3) Address and, where appropriate and legally possible,  
20 remove governmental constraints to the maintenance,  
21 improvement, and development of housing, including housing for  
22 all income levels and housing for persons with disabilities. The  
23 program shall remove constraints to, or provide reasonable  
24 accommodations for housing designed for, intended for  
25 occupancy by, or with supportive services for, persons with  
26 disabilities.

27 (4) Conserve and improve the condition of the existing  
28 affordable housing stock, which may include addressing ways to  
29 mitigate the loss of dwelling units demolished by public or private  
30 action.

31 (5) Promote housing opportunities for all persons regardless of  
32 race, religion, sex, marital status, ancestry, national origin, color,  
33 familial status, or disability.

34 (6) (A) Preserve for lower income households the assisted  
35 housing developments identified pursuant to paragraph ~~(8)~~ (9) of  
36 subdivision (a). The program for preservation of the assisted  
37 housing developments shall utilize, to the extent necessary, all  
38 available federal, state, and local financing and subsidy programs  
39 identified in paragraph ~~(8)~~ (9) of subdivision (a), except where a  
40 community has other urgent needs for which alternative funding

1 sources are not available. The program may include strategies that  
2 involve local regulation and technical assistance.

3 (B) The program shall include an identification of the agencies  
4 and officials responsible for the implementation of the various  
5 actions and the means by which consistency will be achieved with  
6 other general plan elements and community goals. The local  
7 government shall make a diligent effort to achieve public  
8 participation of all economic segments of the community in the  
9 development of the housing element, and the program shall  
10 describe this effort.

11 (d) The analysis and program for preserving assisted housing  
12 developments required by the amendments to this section enacted  
13 by the Statutes of 1989 shall be adopted as an amendment to the  
14 housing element by July 1, 1992.

15 (e) Failure of the department to review and report its findings  
16 pursuant to Section 65585 to the local government between July  
17 1, 1992, and the next periodic review and revision required by  
18 Section 65588, concerning the housing element amendment  
19 required by the amendments to this section by the Statutes of 1989,  
20 shall not be used as a basis for allocation or denial of any housing  
21 assistance administered pursuant to Part 2 (commencing with  
22 Section 50400) of Division 31 of the Health and Safety Code.

23 SEC. 2. Section 65583.1 of the Government Code is amended  
24 to read:

25 65583.1. (a) The Department of Housing and Community  
26 Development, in evaluating a proposed or adopted housing  
27 element for compliance with state law, may allow a city or county  
28 to identify adequate sites, as required pursuant to Section 65583,  
29 by a variety of methods, including, but not limited to,  
30 redesignation of property to a more intense land use category and  
31 increasing the density allowed within one or more categories. The  
32 department may also allow a city or county to identify sites for  
33 second units based on the number of second units developed in the  
34 prior housing element planning period whether or not the units are  
35 permitted by right, the need for these units in the community, the  
36 resources or incentives available for their development, and any  
37 other relevant factors, as determined by the department. Nothing  
38 in this section reduces the responsibility of a city or county to  
39 identify, by income category, the total number of sites for  
40 residential development as required by this article.



1 (b) Sites that contain permanent housing units located on a  
2 military base undergoing closure or conversion as a result of action  
3 pursuant to the Defense Authorization Amendments and Base  
4 Closure and Realignment Act (Public Law 100-526), the Defense  
5 Base Closure and Realignment Act of 1990 (Public Law 101-510),  
6 or any subsequent act requiring the closure or conversion of a  
7 military base may be identified as an adequate site if the housing  
8 element demonstrates that the housing units will be available for  
9 occupancy by households within the planning period of the  
10 element. No sites containing housing units scheduled or planned  
11 for demolition or conversion to nonresidential uses shall qualify  
12 as an adequate site.

13 Any city, city and county, or county using this subdivision shall  
14 address the progress in meeting this section in the reports provided  
15 pursuant to paragraph (1) of subdivision (b) of Section 65400.

16 (c) (1) The Department of Housing and Community  
17 Development may allow a city or county to substitute the provision  
18 of units for up to 25 percent of the community's obligation to  
19 identify adequate sites for any income category in its housing  
20 element pursuant to paragraph (1) of subdivision (c) of Section  
21 65583 if the community includes in its housing element a program  
22 committing the local government to provide units in that income  
23 category within the city or county that will be made available  
24 through the provision of committed assistance during the planning  
25 period covered by the element to low- and very low income  
26 households at affordable housing costs or affordable rents, as  
27 defined in Sections 50052.5 and 50053 of the Health and Safety  
28 Code, and ~~which~~ *that* meet the requirements of paragraph (2). *The*  
29 *number of prison beds in the local agency's jurisdiction shall count*  
30 *toward this requirement.* Except as otherwise provided in this  
31 subdivision, the community may substitute one dwelling unit for  
32 one dwelling unit site in the applicable income category. The  
33 program shall do all of the following:

34 (A) Identify the specific, existing sources of committed  
35 assistance and dedicate a specific portion of the funds from those  
36 sources to the provision of housing pursuant to this subdivision.

37 (B) Indicate the number of units that will be provided to both  
38 low- and very low income households and demonstrate that the  
39 amount of dedicated funds is sufficient to develop the units at  
40 affordable housing costs or affordable rents.



1 (C) Demonstrate that the units meet the requirements of  
2 paragraph (2).

3 (2) Only units that comply with subparagraph (A), (B), or (C)  
4 qualify for inclusion in the housing element program described in  
5 paragraph (1), as follows:

6 (A) Units that are to be substantially rehabilitated with  
7 committed assistance from the city or county and constitute a net  
8 increase in the community's stock of housing affordable to low-  
9 and very low income households. For purposes of this  
10 subparagraph, a unit is not eligible to be "substantially  
11 rehabilitated" unless all of the following requirements are met:

12 (i) At the time the unit is identified for substantial  
13 rehabilitation, (I) the local government has determined that the  
14 unit is at imminent risk of loss to the housing stock, (II) the local  
15 government has committed to provide relocation assistance  
16 pursuant to Chapter 16 (commencing with Section 7260) of  
17 Division 7 of Title 1 to any occupants temporarily or permanently  
18 displaced by the rehabilitation or code enforcement activity, (III)  
19 the local government requires that any displaced occupants will  
20 have the right to reoccupy the rehabilitated units, and (IV) the unit  
21 has been cited and found by the local code enforcement agency or  
22 a court to be unfit for human habitation and vacated or subject to  
23 being vacated because of the existence for not less than 120 days  
24 of four of the conditions listed in subdivisions (a) to (g), inclusive,  
25 of Section 17995.3 of the Health and Safety Code.

26 (ii) The rehabilitated unit will have long-term affordability  
27 covenants and restrictions that require the unit to be available to,  
28 and occupied by, persons or families of low- or very low income  
29 at affordable housing costs for at least 20 years or the time period  
30 required by any applicable federal or state law or regulation,  
31 except that if the period is less than 20 years, only one unit shall  
32 be credited as an identified adequate site for every three units  
33 rehabilitated pursuant to this section, and no credit shall be allowed  
34 for a unit required to remain affordable for less than 10 years.

35 (iii) Prior to initial occupancy after rehabilitation, the local  
36 code enforcement agency shall issue a certificate of occupancy  
37 indicating compliance with all applicable state and local building  
38 code and health and safety code requirements.

39 (B) Units that are located in a multifamily rental housing  
40 complex of 16 or more units, are converted with committed

1 assistance from the city or county from nonaffordable to  
2 affordable by acquisition of the unit or the purchase of  
3 affordability covenants and restrictions for the unit, are not  
4 acquired by eminent domain, and constitute a net increase in the  
5 community's stock of housing affordable to low- and very low  
6 income households. For purposes of this subparagraph, a unit is  
7 not converted by acquisition or the purchase of affordability  
8 covenants unless all of the following occur:

9 (i) The unit is made available at a cost affordable to low- or very  
10 low income households.

11 (ii) At the time the unit is identified for acquisition, the unit is  
12 not available at a cost affordable to low- or very low income  
13 households.

14 (iii) At the time the unit is identified for acquisition the unit is  
15 not occupied by low- or very low income households.

16 (iv) The unit is in decent, safe, and sanitary condition at the  
17 time of occupancy.

18 (v) The acquisition price is not greater than 120 percent of the  
19 median price for housing units in the city or county.

20 (vi) The unit has long-term affordability covenants and  
21 restrictions that require the unit to be affordable to persons of low-  
22 or very low income for not less than 30 years.

23 (C) Units that will be preserved at affordable housing costs to  
24 persons or families of low- or very low incomes with committed  
25 assistance from the city or county by acquisition of the unit or the  
26 purchase of affordability covenants for the unit. For purposes of  
27 this subparagraph, a unit shall not be deemed preserved unless all  
28 of the following occur:

29 (i) The unit has long-term affordability covenants and  
30 restrictions that require the unit to be affordable to and reserved for  
31 occupancy by persons of the same or lower income group as the  
32 current occupants for a period of at least 40 years.

33 (ii) The unit is multifamily rental housing that receives  
34 governmental assistance under any of the following state and  
35 federal programs: Section 221(d)(3) of the National Housing Act  
36 (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National  
37 Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing  
38 Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement  
39 assistance under Section 101 of the Housing and Urban  
40 Development Act of 1965, as amended (12 U.S.C. Sec. 1701s);

1 under Section 515 of the Housing Act of 1949, as amended (42  
2 U.S.C. Sec. 1485); and any new construction, substantial  
3 rehabilitation, moderate rehabilitation, property disposition, and  
4 loan management set-aside programs, or any other program  
5 providing project-based assistance, under Section 8 of the United  
6 States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f);  
7 any state and local multifamily revenue bond programs; local  
8 redevelopment programs; the federal Community Development  
9 Block Grant Program; and other local housing assistance  
10 programs or units that were used to qualify for a density bonus  
11 pursuant to Section 65916.

12 (iii) The city or county finds, after a public hearing, that the unit  
13 is eligible, and is reasonably expected, to change from housing  
14 affordable to low- and very low income households to any other  
15 use during the next five years due to termination of subsidy  
16 contracts, mortgage prepayment, or expiration of restrictions on  
17 use.

18 (iv) The unit is in decent, safe, and sanitary condition at the  
19 time of occupancy.

20 (v) At the time the unit is identified for preservation it is  
21 available at affordable cost to persons or families of low- or very  
22 low income.

23 (3) This subdivision does not apply to any city or county that,  
24 during the current or immediately prior planning period, as  
25 defined by Section 65588, has not met any of its share of the  
26 regional need for affordable housing, as defined in Section 65584,  
27 for low- and very low income households. A city or county shall  
28 document for any such housing unit that a building permit has been  
29 issued and all development and permit fees have been paid or the  
30 unit is eligible to be lawfully occupied.

31 (4) For purposes of this subdivision, “committed assistance”  
32 means that the city or county enters into a legally enforceable  
33 agreement during the first two years of the housing element  
34 planning period that obligates sufficient available funds to provide  
35 the assistance necessary to make the identified units affordable and  
36 that requires that the units be made available for occupancy within  
37 two years of the execution of the agreement. “Committed  
38 assistance” does not include tenant-based rental assistance.

39 (5) For purposes of this subdivision, “net increase” includes  
40 only housing units provided committed assistance pursuant to

1 subparagraph (A) or (B) of paragraph (2) in the current planning  
2 period, as defined in Section 65588, that were not provided  
3 committed assistance in the immediately prior planning period.

4 (6) For purposes of this subdivision, “the time the unit is  
5 identified” means the earliest time when any city or county agent,  
6 acting on behalf of a public entity, has proposed in writing or has  
7 proposed orally or in writing to the property owner, that the unit  
8 be considered for substantial rehabilitation, acquisition, or  
9 preservation.

10 (7) On July 1 of the third year of the planning period, as defined  
11 by Section 65588, in the report required pursuant to Section  
12 65400, each city or county that has included in its housing element  
13 a program to provide units pursuant to subparagraph (A), (B), or  
14 (C) of paragraph (2) shall report in writing to the legislative body,  
15 and to the department within 30 days of making its report to the  
16 legislative body, on its progress in providing units pursuant to this  
17 subdivision. The report shall identify the specific units for which  
18 committed assistance has been provided or which have been made  
19 available to low- and very low income households, and it shall  
20 adequately document how each unit complies with this  
21 subdivision. If, by July 1 of the third year of the planning period,  
22 the city or county has not entered into an enforceable agreement  
23 of committed assistance for all units specified in the programs  
24 adopted pursuant to subparagraph (A), (B), or (C) of paragraph  
25 (2), the city or county shall, not later than July 1 of the fourth year  
26 of the planning period, adopt an amended housing element in  
27 accordance with Section 65585, identifying additional adequate  
28 sites pursuant to paragraph (1) of subdivision (c) of Section 65583  
29 sufficient to accommodate the number of units for which  
30 committed assistance was not provided. If a city or county does not  
31 amend its housing element to identify adequate sites to address any  
32 shortfall, or fails to complete the rehabilitation, acquisition,  
33 purchase of affordability covenants, or the preservation of any  
34 housing unit within two years after committed assistance was  
35 provided to that unit, it shall be prohibited from identifying units  
36 pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the  
37 housing element that it adopts for the next planning period, as  
38 defined in Section 65588, above the number of units actually  
39 provided or preserved due to committed assistance.



1 SEC. 3. Section 65588 of the Government Code is amended  
2 to read:

3 65588. (a) Each local government shall review its housing  
4 element as frequently as appropriate to evaluate all of the  
5 following:

6 (1) The appropriateness of the housing goals, objectives, and  
7 policies in contributing to the attainment of the state housing goal.

8 (2) The effectiveness of the housing element in attainment of  
9 the community's housing goals and objectives.

10 (3) The progress of the city, county, or city and county in  
11 implementation of the housing element.

12 (b) The housing element shall be revised as appropriate, but not  
13 less than every five years, to reflect the results of this periodic  
14 review.

15 (c) The review and revision of housing elements required by  
16 this section shall take into account any low- or moderate-income  
17 housing provided or required pursuant to Section 65590.

18 (d) The review pursuant to subdivision (c) shall include, but  
19 need not be limited to, the following:

20 (1) The number of new housing units approved for  
21 construction within the coastal zone after January 1, 1982.

22 (2) The number of housing units for persons and families of  
23 low or moderate income, as defined in Section 50093 of the Health  
24 and Safety Code, required to be provided in new housing  
25 developments either within the coastal zone or within three miles  
26 of the coastal zone pursuant to Section 65590.

27 (3) The number of existing residential dwelling units occupied  
28 by persons and families of low or moderate income, as defined in  
29 Section 50093 of the Health and Safety Code, that have been  
30 authorized to be demolished or converted since January 1, 1982,  
31 in the coastal zone.

32 (4) The number of residential dwelling units for persons and  
33 families of low or moderate income, as defined in Section 50093  
34 of the Health and Safety Code, that have been required for  
35 replacement or authorized to be converted or demolished as  
36 identified in paragraph (3). The location of the replacement units,  
37 either onsite, elsewhere within the locality's jurisdiction within the  
38 coastal zone, or within three miles of the coastal zone within the  
39 locality's jurisdiction, shall be designated in the review.

1     (5) *The number of existing prison beds for the purposes of*  
2 *meeting its low- or moderate-income housing requirement.*

3     (e) Notwithstanding subdivision (b) or the date of adoption of  
4 the housing elements previously in existence, the dates of revisions  
5 for the housing element shall be modified as follows:

6     (1) Local governments within the regional jurisdiction of the  
7 Southern California Association of Governments: December 31,  
8 2000, for the third revision, and June 30, 2005, for the fourth  
9 revision.

10    (2) Local governments within the regional jurisdiction of the  
11 Association of Bay Area Governments: December 31, 2001, for  
12 the third revision, and June 30, 2006, for the fourth revision.

13    (3) Local governments within the regional jurisdiction of the  
14 Council of Fresno County Governments, the Kern County Council  
15 of Governments, and the Sacramento Area Council of  
16 Governments: June 30, 2002, for the third revision, and June 30,  
17 2007, for the fourth revision.

18    (4) Local governments within the regional jurisdiction of the  
19 Association of Monterey Bay Area Governments: December 31,  
20 2002, for the third revision, and June 30, 2007, for the fourth  
21 revision.

22    (5) Local governments within the regional jurisdiction of the  
23 San Diego Association of Governments: December 31, 1999, for  
24 the third revision cycle ending June 30, 1999, and June 30, 2004,  
25 for the fourth revision.

26    (6) All other local governments: December 31, 2003, for the  
27 third revision, and June 30, 2008, for the fourth revision.

28    (7) Subsequent revisions shall be completed not less often than  
29 at five-year intervals following the fourth revision.

30    SEC. 4. Section 65589.5 of the Government Code is amended  
31 to read:

32    65589.5. (a) The Legislature finds and declares all of the  
33 following:

34    (1) The lack of housing is a critical problem that threatens the  
35 economic, environmental, and social quality of life in California.

36    (2) California housing has become the most expensive in the  
37 nation. The excessive cost of the state's housing supply is partially  
38 caused by activities and policies of many local governments that  
39 limit the approval of housing, increase the cost of land for housing,

1 and require that high fees and exactions be paid by producers of  
2 housing.

3 (3) Among the consequences of those actions are  
4 discrimination against low-income and minority households, lack  
5 of housing to support employment growth, imbalance in jobs and  
6 housing, reduced mobility, urban sprawl, excessive commuting,  
7 and air quality deterioration.

8 (4) Many local governments do not give adequate attention to  
9 the economic, environmental, and social costs of decisions that  
10 result in disapproval of housing projects, reduction in density of  
11 housing projects, and excessive standards for housing projects.

12 (b) It is the policy of the state that a local government not reject  
13 or make infeasible housing developments that contribute to  
14 meeting the housing need determined pursuant to this article  
15 without a thorough analysis of the economic, social, and  
16 environmental effects of the action and without complying with  
17 subdivision (d).

18 (c) The Legislature also recognizes that premature and  
19 unnecessary development of agricultural lands for urban uses  
20 continues to have adverse effects on the availability of those lands  
21 for food and fiber production and on the economy of the state.  
22 Furthermore, it is the policy of the state that development should  
23 be guided away from prime agricultural lands; therefore, in  
24 implementing this section, local jurisdictions should encourage, to  
25 the maximum extent practicable, in filling existing urban areas.

26 (d) A local agency shall not disapprove a housing development  
27 project, including farmworker housing as defined in subdivision  
28 (d) of Section 50199.50 of the Health and Safety Code, for very  
29 low, low- or moderate-income households or condition approval,  
30 including through the use of design review standards, in a manner  
31 that renders the project infeasible for development for the use of  
32 very low, low- or moderate-income households unless it makes  
33 written findings, based upon substantial evidence in the record, as  
34 to one of the following:

35 (1) The jurisdiction has adopted a housing element pursuant to  
36 this article that has been revised in accordance with Section 65588  
37 and that is in substantial compliance with this article, and the  
38 development project is not needed for the jurisdiction to meet its  
39 share of the regional housing need for very low, low-, or  
40 moderate-income housing.



(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(6) The development project is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of

the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) “Housing for very low, low-, or moderate-income households” means *housing* that ~~either (A) at meets any of the following criteria:~~

(A) ~~At least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code.~~ Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based.

(B) *One hundred percent of the units shall be sold or rented to moderate-income households, as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined*

1 *in Section 65008 of this code.* Housing units targeted for persons  
2 and families of moderate income shall be made available at a  
3 monthly housing cost that does not exceed 30 percent of 100  
4 percent of area median income with adjustments for household  
5 size made in accordance with the adjustment factors on which the  
6 moderate income eligibility limits are based.

7 *(C) Beds in a prison.*

8 (3) “Area median income” means area median income as  
9 periodically established by the Department of Housing and  
10 Community Development pursuant to Section 50093 of the Health  
11 and Safety Code. The developer shall provide sufficient legal  
12 commitments to ensure continued availability of units for very low  
13 or low-income households in accordance with the provisions of  
14 this subdivision for 30 years.

15 (4) “Neighborhood” means a planning area commonly  
16 identified as such in a community’s planning documents, and  
17 identified as a neighborhood by the individuals residing and  
18 working within the neighborhood. Documentation demonstrating  
19 that the area meets the definition of neighborhood may include a  
20 map prepared for planning purposes which lists the name and  
21 boundaries of the neighborhood.

22 (5) “Disapprove the development project” includes any  
23 instance in which a local agency does either of the following:

24 (A) Votes on a proposed housing development project  
25 application and the application is disapproved.

26 (B) Fails to comply with the time periods specified in  
27 subparagraph (B) of paragraph (1) of subdivision (a) of Section  
28 65950. An extension of time pursuant to Article 5 (commencing  
29 with Section 65950) shall be deemed to be an extension of time  
30 pursuant to this paragraph.

31 (i) If any city, county, or city and county denies approval or  
32 imposes restrictions, including design changes, a reduction of  
33 allowable densities or the percentage of a lot that may be occupied  
34 by a building or structure under the applicable planning and zoning  
35 in force at the time the application is deemed complete pursuant  
36 to Section 65943, that have a substantial adverse effect on the  
37 viability or affordability of a housing development for very low,  
38 low-, or moderate-income households, and the denial of the  
39 development or the imposition of restrictions on the development  
40 is the subject of a court action which challenges the denial, then the

1 burden of proof shall be on the local legislative body to show that  
2 its decision is consistent with the findings as described in  
3 subdivision (d) and that the findings are supported by substantial  
4 evidence in the record.

5 (j) When a proposed housing development project complies  
6 with applicable, objective general plan and zoning standards and  
7 criteria, including design review standards, in effect at the time  
8 that the housing development project's application is determined  
9 to be complete, but the local agency proposes to disapprove the  
10 project or to approve it upon the condition that the project be  
11 developed at a lower density, the local agency shall base its  
12 decision regarding the proposed housing development project  
13 upon written findings supported by substantial evidence on the  
14 record that both of the following conditions exist:

15 (1) The housing development project would have a specific,  
16 adverse impact upon the public health or safety unless the project  
17 is disapproved or approved upon the condition that the project be  
18 developed at a lower density. As used in this paragraph, a  
19 "specific, adverse impact" means a significant, quantifiable,  
20 direct, and unavoidable impact, based on objective, identified  
21 written public health or safety standards, policies, or conditions as  
22 they existed on the date the application was deemed complete.

23 (2) There is no feasible method to satisfactorily mitigate or  
24 avoid the adverse impact identified pursuant to paragraph (1),  
25 other than the disapproval of the housing development project or  
26 the approval of the project upon the condition that it be developed  
27 at a lower density.

28 (k) If in any action brought to enforce the provisions of this  
29 section, a court finds that the local agency disapproved a project  
30 or conditioned its approval in a manner rendering it infeasible for  
31 the development of housing for very low, low-, or  
32 moderate-income households, including farmworker housing,  
33 without making the findings required by this section or without  
34 making sufficient findings supported by substantial evidence, the  
35 court shall issue an order or judgment compelling compliance with  
36 this section within 60 days, including, but not limited to, an order  
37 that the local agency take action on the development project. The  
38 court shall retain jurisdiction to ensure that its order or judgment  
39 is carried out and shall award reasonable attorney fees and costs of  
40 suit to the plaintiff or petitioner who proposed the housing

1 development, except under extraordinary circumstances in which  
2 the court finds that awarding fees would not further the purposes  
3 of this section. If the court determines that its order or judgment  
4 has not been carried out within 60 days, the court may issue further  
5 orders as provided by law to ensure that the purposes and policies  
6 of this section are fulfilled.

7 (l) In any action, the record of the proceedings before the local  
8 agency shall be filed as expeditiously as possible and,  
9 notwithstanding Section 1094.6 of the Code of Civil Procedure, all  
10 or part of the record may be filed (1) by the petitioner with the  
11 petition or petitioner's points and authorities, (2) by the respondent  
12 with respondent's points and authorities, (3) after payment of costs  
13 by the petitioner, or (4) as otherwise directed by the court. If the  
14 expense of preparing the record has been borne by the petitioner  
15 and the petitioner is the prevailing party, the expense shall be  
16 taxable as costs.

17 SEC. 5. Notwithstanding Section 17610 of the Government  
18 Code, if the Commission on State Mandates determines that this  
19 act contains costs mandated by the state, reimbursement to local  
20 agencies and school districts for those costs shall be made pursuant  
21 to Part 7 (commencing with Section 17500) of Division 4 of Title  
22 2 of the Government Code. If the statewide cost of the claim for  
23 reimbursement does not exceed one million dollars (\$1,000,000),  
24 reimbursement shall be made from the State Mandates Claims  
25 Fund.

